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Docket in case # 07 CV/CR 3216
As: Settle

BY FACSIMILE

Date: 8/16/08 LMS/USMJ

August 11, 2008

United States Magistrate
Judge Lisa Smith
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, New York 10601-4150

Re: Pane v. Greenburgh, et al
07 CV 3216 (WP4) (LMS)

Dear Judge Smith:

At a Court conference held on April 18, 2008, plaintiff's counsel requested to file and serve an Amended Complaint.

Upon consideration of the request, Mr. Batra was given until May 12, 2008 to file the Amended Complaint. See page 32 of the Transcript of the Conference of April 18, 2008. By the date of that Court-imposed deadline Mr. Batra filed an Amended Complaint which named two (2) additional defendants on whose behalf, and that of the other defendants I represent, I interposed an Answer.

In accordance with FRCP 15, a party may amend a complaint only by leave of court or by written consent of the adverse party. FRCP 7 (b) provides that "an application to the court for an order shall be by motion which...shall be made in writing..." At no time have I - or counsel for the other defendants - agreed in writing to an amendment of the Complaint, nor has the plaintiff obtained by written motion leave of Court to amend the Complaint.

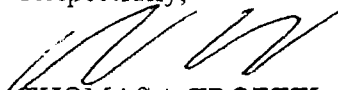
To date, the only defendant whose deposition has been taken is Detective Paul Fertig. The plaintiff has not noticed the deposition of any of the other defendants.

Because the plaintiff has not properly obtained leave of Court to amend the Complaint to add Police Officers Edward Olsen and Daniel Massett as defendants, it is

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my position that they are not required to appear for a deposition. As a result, I respectfully request that the remaining party depositions be limited to those defendants named in the original Complaint until such time, if at all, leave of the Court is obtained by the plaintiff to serve and file an Amended Complaint.

Respectfully,



THOMAS J. TROETTI

TJT:mt

cc: Ravi Batra, Esq. (by facsimile)
Brian Murphy, Esq. (by facsimile)
Andrew Quinn, Esq. (by facsimile)